

United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

ROGER LIVERMAN AND
AARON LIVERMAN
Plaintiffs,

V.

DENTON COUNTY, TEXAS,
CRIMINAL DISTRICT ATTORNEY,
PAUL JOHNSON, LARA TOMLIN,
RICK DANNIEL, LINDSEY SHEGUIT,
and KATHERYN PAYNE HALL,
Defendants.

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CASE NO. 4:16CV801
Judge Mazzant/Judge Johnson

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636. On May 17, 2017, the report of the Magistrate Judge (Dkt. 58) was entered containing proposed findings of fact and recommendations that Defendant Katheryn Payne Hall's ("Hall") Motion to Dismiss and Motion to Strike (Dkt. 52) be **GRANTED** in part and **DENIED** in part, specifically that the Motion to Dismiss be **GRANTED** and the Motion to Strike be **DENIED** as moot.

Having received the report of the United States Magistrate Judge, and no objections thereto having been timely filed, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge's report as the findings and conclusions of the Court.¹

¹ The Court notes that although no objections to the Magistrate Judge's report were filed, Plaintiffs filed a motion seeking to stay the Court's final ruling on Defendant Hall's motion to dismiss pending resolution of

Pro se Plaintiffs Roger Liverman and Aaron Liverman (“Plaintiffs”) have sued various individuals and entities, including “Denton County, Texas Denton County Criminal District Attorney”² and Denton County Criminal District Attorney Paul Johnson (“Johnson”), Assistant Criminal District Attorneys Lara Tomlin (“Tomlin”), Rick Daniel (“Daniel”), and Lindsey Sheguit (“Sheguit”) (collectively the “District Attorney Defendants”), and Defendant Hall, who according to the record is the daughter of Plaintiff Roger Liverman and the sister of Plaintiff Aaron Liverman. Plaintiffs’ claims against the District Attorney Defendants have been dismissed. *See* Dkt. 50.

The Magistrate Judge properly found that Defendant Hall’s motion to dismiss should be granted because she is a private citizen and not a state actor, and thus no claim can be stated against her under Section 1983. Accordingly, Plaintiffs’ pleadings against Defendant Hall present no federal question claims over which this Court has subject matter jurisdiction. The Magistrate Judge also correctly concluded that lacking subject matter jurisdiction, the Court should decline to exercise pendent jurisdiction over Plaintiffs’ state-law malicious prosecution claim.

Accordingly, Defendant Hall’s Motion to Dismiss (Dkt. 52) is **GRANTED**, and her Motion to Strike (Dkt. 52) is **DENIED** as moot.


Plaintiffs’ interlocutory appeal of the Court’s Order dismissing the District Attorney Defendants. *See* Dkt. 60. Plaintiffs appeal, case number 17-40325, is currently pending before the Fifth Circuit Court of Appeals. The Magistrate Judge properly found that a stay is not warranted here because the issues in Defendant Hall’s motion to dismiss are not “substantially intertwined” with the issues and claims in Plaintiffs’ appeal. *See* Dkt. 61 (citing *Hinojosa v. Livingston*, 2014 WL 3588474, at *3 (S.D. Tex. 2014)).

² Plaintiffs’ complaint (Dkt. 1) alleges that Defendant Denton County is a “governmental entity.” *Id.* at 4. However, Denton County has not entered an appearance in this lawsuit; nor is it clear that Denton County been properly served with process.

The case as to Defendant Katheryn Payne Hall shall be dismissed with all costs to be borne by the party incurring same.

It is SO ORDERED.

SIGNED this 15th day of June, 2017.



AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE